

Health Clubs

NJSA 56:8-39 et seq.

56:8-39. Definitions

As used in this act:

a. "Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

b. "Health club" means an establishment which devotes or will devote 40% or more of its square footage to providing services or facilities for the preservation, maintenance, encouragement or development of physical fitness or physical well-being. The term includes an establishment designated as "reducing salon," "health spa," "spa," "exercise gym," "health studio," "health club," or by other terms of similar import.

c. "Health club services" means those services offered by a health club for the preservation, maintenance, encouragement or development of physical fitness or physical well-being.

d. "Health club services contract" means an agreement under which the buyer of health club services purchases or becomes obligated to purchase health club services.

e. "Operating day" means any calendar day on which patrons may inspect and use the health club's facilities and services during a period of at least eight hours, except holidays and Sundays.

L. 1987, c. 238, s. 1.

56:8-40. Registration

Each person who sells or offers for sale health club services in this State shall register with the director on forms the director provides. The registration shall be renewed every two years. Upon the sale of the health club facility or a change in the majority ownership of the stock of the corporate owner, the health club facility shall reregister with the director and shall pay the registration fee. The person shall provide the full name and address of each business location where health club services are sold in the State as well as any other information regarding the ownership and operation of each health club that the director deems appropriate. The registration and renewal fees shall be established or changed by the director and shall be fixed at a level to allow for the proper administration and enforcement of this act, but shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

L. 1987, c. 238, s. 2.

56:8-41. Security

a. A person who sells or offers for sale health club services shall, for each health club facility operated in the State, maintain a bond issued by a surety authorized to transact business in this State or maintain an irrevocable letter of credit by a bank or maintain with the director securities, moneys or other security acceptable to the director to fulfill the requirements of this subsection. The principal sum of the bond, letter of credit, or securities, moneys or other security shall be 10% of the health club's gross income for health club services during the club's last fiscal year, except that the principal sum of the bond, letter of credit, or securities, moneys or other security shall not be less than \$25,000.00, nor more than \$50,000.00. However, the principal sum of the bond, letter of credit, or securities, moneys or other security shall be \$50,000.00 for any period of time that a person sells or offers for sale health club services prior to the opening of the health club facility. After the health club facility opens, the bond, letter of credit, or securities, moneys or other security shall be adjusted to the appropriate sum. The bond, letter of credit, or securities, moneys or other security shall be filed or deposited with the director and shall be executed to the State of New Jersey for the use of any person who, after entering into a health club services contract, is damaged or suffers any loss by reason of breach of contract or bankruptcy by the seller. Any person claiming against the bond, letter of credit, or securities, moneys, or other security may maintain an action at law against the health club and the surety, bank or director, as the case may be. The aggregate liability of the surety, bank, or the director to all persons for all breaches of the conditions of the bond, letter of credit, or the securities, moneys or other security held by the director shall not exceed the amount of the bond, letter of credit, or the securities, moneys or other security held by the director.

In the case of a bond, the health club shall file a copy of the bond with the director and a certificate by the surety that the surety will notify the director at least 10 days in advance of the date of any cancellation or material change in the bond.

b. The provisions of subsection a. of this section shall not be applicable to a person who sells or offers for sale health club services in which the buyer of the health club services purchases or becomes obligated to purchase health club services to be rendered over a period no longer than three months and in which the seller of the health club services requires or collects no more than three months' payment in advance. The person who sells or offers for sale health club services under contracts provided for in this subsection shall file with the director, within 30 days following the effective date of this act and no later than January 15 of every even-numbered year, a declaration, executed under penalty of perjury, stating he sells or offers for sale only health club services under contracts which comply with this subsection. Any person who has filed a declaration pursuant to this subsection and who intends to sell or offer for sale health club services under contracts with longer terms or greater payments in advance than those provided in this subsection shall comply with subsection a. of this section.

L. 1987, c. 238, s. 3.

56:8-42. Health club services contract

a. Every contract for health club services shall be in writing. A copy of the written contract shall be given to the buyer at the time the buyer signs the contract.

b. A health club services contract shall specifically set forth in a conspicuous manner on the first page of the contract the buyer's total payment obligation for health club services to be received pursuant to the contract.

c. A health club services contract of a health club facility which maintains a bond, irrevocable letter of credit or securities, moneys or other security pursuant to subsection a. of section 3 of this act shall set forth that a bond, irrevocable letter of credit or securities, moneys or other security is filed or deposited with the Director of the Division of Consumer Affairs to protect buyers of these contracts who are damaged or suffer any loss by reason of breach of contract or bankruptcy by the seller.

d. Services to be rendered to the buyer under the contract shall not obligate the buyer for more than three years from the date the contract is signed by the buyer.

e. A contract for new or increased health club services may be cancelled by the buyer for any reason at any time before midnight of the third operating day after the buyer receives a copy of the contract. In order to cancel a contract the buyer shall notify the health club of cancellation in writing, by registered or certified mail, return receipt requested, or personal delivery, to the address specified in the contract. All moneys paid pursuant to the cancelled contract shall be fully refunded within 30 days of receipt of the notice of cancellation. If the customer has executed any credit or loan agreement through the health club to pay all or part of health club services, the negotiable instrument executed by the buyer shall also be returned within 30 days. The contract shall contain a conspicuous notice printed in at least 10-point bold-faced type as follows:

"NOTICE TO CUSTOMER

You are entitled to a copy of this contract at the time you sign it.

You may cancel this contract at any time before midnight of the third operating day after receiving a copy of this contract. If you choose to cancel this contract, you must either:

1. Send a signed and dated written notice of cancellation by registered or certified mail, return receipt requested; or

2. Personally deliver a signed and dated written notice of cancellation to:
..... (Name of health club) (Address of health club)

If you cancel this contract within the three-day period, you are entitled to a full refund of your money. If the third operating day falls on a Sunday or holiday, notice is timely given if it is mailed or delivered as specified in this notice on the next operating day.

Refunds must be made within 30 days of receipt of the cancellation notice to the health club.

'Operating day' means any calendar day on which patrons may inspect and use the health club's facilities and services during a period of at least eight hours, except holidays and Sundays."

f. A health club services contract shall provide that it is subject to cancellation by notice sent by registered or certified mail, return receipt requested, or personally delivered, to the address of the health club specified in the contract upon the buyer's death or permanent disability, if the permanent disability is fully described and confirmed to the health club by a physician. In a cancellation under this subsection, the health club may retain the portion of the total contract price representing the services used plus reimbursement for expenses incurred in an amount not to exceed 10% of the total contract price.

g. A health club services contract shall provide that it is subject to cancellation by notice sent by registered or certified mail, return receipt requested, or personally delivered, to the address of the health club specified in the contract upon the buyer's change of permanent residence to a location more than 25 miles from the health club or an affiliated health club offering the same or similar services and facilities at no additional expense to the buyer. In a cancellation under this subsection, the health club may require proof of the new permanent residence and may retain a prorated share of the total contract price based upon the date the notice was received plus reimbursement for expenses incurred in an amount not to exceed 10% of the total contract price.

h. A health club services contract shall provide that if a health club facility is closed for a period longer than 30 days through no fault of the buyer of the health club services contract, the buyer is entitled to either extend the contract for a period equal to that during which the facility is closed or to receive a prorated refund of the amount paid by the buyer under the contract.

i. A health club services contract shall not obligate the buyer to renew the contract.

j. If a health club facility is not in existence on the date the contract is executed, the health club services contract shall provide that a buyer of a contract may cancel the contract if the facility is not open for business on a date which shall be set forth in the contract and receive a full refund of any deposit or payment on the contract.

L. 1987, c. 238, s. 4.

56:8-43. Right of action

a. A health club services contract shall not require the execution of any note or series of notes by the buyer which, if separately negotiated, will cut off as to third parties any right of action or defense which the buyer has against the health club.

b. A right of action or defense arising out of a health club services contract which the buyer has against the health club shall not be cut off by assignment of the contract whether or not the assignee acquires the contract in good faith and for value.

L. 1987, c. 238, s. 5.

56:8-44. 25% limit

A health club may not charge and accept a down payment exceeding 25% of the total contract price prior to opening the health club facility.

L. 1987, c. 238, s. 6.

56:8-45. Contracts voidable

a. Any health club services contract entered into in reliance upon any fraudulent or substantially and willfully false or misleading information, representation, notice or advertisement of the health club is voidable at the option of the buyer of the contract. Any health club services contract which does not comply with the applicable provisions of this act is voidable at the option of the buyer of the contract.

b. Any waiver by the buyer of the provisions of this act is void.

L. 1987, c. 238, s. 7.

56:8-46. Violation

It is an unlawful practice and a violation of P.L. 1960, c. 39 (C. 56:8-1 et seq.) to violate the provisions of this act.

L. 1987, c. 238, s. 8.

56:8-47. Nonapplicability

The provisions of this act shall not apply to any nonprofit public or private school, college or university; the State or any of its political subdivisions; or any bona fide nonprofit, religious, ethnic, or community organization.

L. 1987, c. 238, s. 9.

56:8-48. Rules, regulations

The director shall adopt pursuant to the provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to effectuate the purposes of this act.

L. 1987, c. 238, s. 10.